

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DANIEL WHALEN,

Plaintiff,

-against-

CSX TRANSPORTATION, INC.,

Defendant.

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CSX TRANSPORTATION, INC.,

Defendant/Third-Party Plaintiff,

-against-

HAWORTH INC. and OFFICE ENVIRONMENTS
SERVICE INC.,

Third-Party Defendants.
-----X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

RICHARD H. RUBENSTEIN, being duly sworn, states the following, under penalty of perjury:

1. I am a member of the firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP, counsel for the Third Party Defendant, Haworth, Inc. ["Haworth"] in this matter. I am familiar with all prior proceedings that have transpired in this case and I submit this affidavit in opposition to the motion to preclude Jamie Williams, Ph.D. filed by Plaintiff Daniel Whalen.

Docket No.: 13 CV 3784 (LGS)

**AFFIDAVIT OF RICHARD H.
RUBENSTEIN IN OPPOSITION
TO PLAINTIFF'S MOTION TO
PRECLUDE JAMIE
WILLIAMS, PH.D.**

2. Annexed hereto as Exhibit “A” are excerpts from the deposition of Daniel Whalen taken on January 16, 2015.

3. Annexed hereto as Exhibit “B” is a report dated October 1, 1990 by Robert Boothe, M.D. of Nyack Orthopedics & Sports Medicine P.C.

4. Annexed hereto as Exhibit “C” is an “Initial Report of Injury” dated February 20, 1984 regarding Mr. Whalen.

5. Annexed hereto as Exhibit “D” is a two page document entitled: “Physician Notes” dated November 8, 2011 that was digitally signed by Douglas Mailly, M.D. at Hudson Valley Hospital.

6. Annexed hereto as Exhibit “E” is the chart from Mr. Whalen’s stay at Hudson Valley Hospital, which began and ended on November 8, 2011.

7. Annexed hereto as Exhibit “F” is a report dated November 16, 2011 by Barry Krosser, M.D. of the Mount Kisco Medical Group PC.


8. Annexed hereto as Exhibit “G” is an excerpt from the deposition of Timothy Brereton of CSX, Transportation, Inc. taken on February 4, 2015.

9. Annexed hereto as Exhibit “H” is the c.v., publications list and four year testimonial history of Dr. Williams.

10. Annexed hereto as Exhibit “I” is an Order dated October 21, 2014 by the Honorable Rudy Lozano, U.S. District Judge in *Kresich v. City of Lake Station*, 2:12-CV-50 (N.D. Indiana 2014).

11. Annexed hereto as Exhibit "J" is a copy of the peer-reviewed article entitled: "Comparative strengths and structural properties of the upper and lower cervical spine in flexion and extension", Nightingale, R.W., *et al.*, *Journal of Biomechanics* 35(2002) 725-732.

Dated: New York, New York
January 2, 2016


Richard H. Rubenstein (RR/4194)

Sworn to before me this
2 day of January, 2016


Notary Public

My commission expires:

EMILY D. MANN
NOTARY PUBLIC, State of New York
No. 01MA6249533
Qualified in Kings County
Commission Expires October 11, 2015 2019